



BUSINESS ORGANIZATIONS II

Ronald J. Daniels
Jeffrey MacIntosh

VOLUME III

January 1991

Faculty of Law
University of Toronto

BORA LASKIN LAW LIBRARY

APR 2 1991

FACULTY OF LAW
UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

BUSINESS ORGANIZATIONS II

Ronald J. Daniels
Jeffrey MacIntosh

VOLUME III

January 1991

Faculty of Law
University of Toronto

K F 1374 C 43

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

TABLE OF CONTENTS

		<u>PAGE</u>
X.	FUNDAMENTAL CHANGES	
A.	Introductory Note	856
B.	Amalgamations	857
	(i) Some Empirical Evidenc. Jensen & Ruback, "The Market for Corporate Control"	857
	(ii) The Statutory Provisions	873
C.	Sale of all or Substantially all The Assets of The Corporations	875
	(i) Some Empirical Evidence. Linn and Rozeff, "The Corporate Sell-Off"	875
	(ii) The Statutory Provisions	885
	(iii) The Meaning of "All or Substantially all The Property of The Corporation" and "In The Ordinary Course of Business"	885
D.	Arrangements	892
	(i) In re Dorman, Long and Company, Ltd. [1934] 1 Ch. 635	892
	(ii) Commentary: Arrangements in England (from MacIntosh, Osgoode Hall L.R., Spring 1987)	898
	(iii) Commentary: Arrangements in Canada (from MacIntosh, Osgoode Hall L.R., Spring 1987)	899
E.	Appraisal Rights	905
	(i) The Statutory Provisions	905
	(ii) The Intended Role for the Appraisal Right	905
	(iii) Valuation: What is the Meaning of "Fair Value"?	910
	(a) Excerpt from Gilson, <u>The Law and Finance of Corporate Acquisitions</u>	910

(ii)

PAGE

(b)	See <u>Re Domglas and Jarislowky, Casebook, Business Organizations I</u> , pp.1145-1162 ...	938
(c)	MacIntosh, "The Shareholders' Appraisal Right in Canada: A Critical Reappraisal" (1986), 24 Osgoode Hall L.J. 201	938
(d)	The Interests Protected by the Appraisal Right. MacIntosh, "The Shareholders' Appraisal Right in Canada: A Critical Reappraisal" (1986), 24 Osgoode L.J. 201 .	949
F.	Shareholder Voting	972
(i)	Note	972
(ii)	Easterbrook and Fischel, "Voting in Corporate Law" (1983), 26 J. Law and Econ. 395	972
(iii)	Fischel, "Organized Exchanges and The Regulation of Dual Class Common Stock," 54 U. Chi. L. Rev. 119 (1987)	981

XI. TAKEOVERS

A.	Are There any Social Gains from Takeovers?	1001
(i)	Jarrell, Brickly and Netter, "The Market for Corporate Control: The Empirical Evidence Since 1980", <u>Journal of Economic Perspectives</u> , Vol. 2, No. 1 (1988)	1001
(ii)	Shleifer and Summers, "Breach of Trust in Hostile Takeovers", from NBER, <u>Corporate Takeovers: Causes and Consequences</u>	1021
B.	Takeovers and Auctions	1040
(i)	Easterbrook and Fischel, "The Proper Role of a Target's Management in Responding to a Tender Offer" 94 <u>Harvard L.R.</u> (1981) 1161	1040
(ii)	Bebchuk, "The Case for Facilitating Competing Tender Offers" (1982) 95 <u>Harvard L.R.</u> (1982) 1028	1064
(iii)	Excerpts from Gilson, "A Structural Approach to Corporations: The Case Against Defensive Tactics in Tender Offers", 33 <u>Stanford L.R.</u> 1981 819	1080

(iii)

	<u>PAGE</u>
C. Statutory Materials	1086
(i) See O.S.A., ss. 88-100 and Regs. 163-75; National Policy Statement No. 38; O.S.C. Policy 9.2 and 9.3	1086

XII.

TAKEOVER RESISTANCE AND SHAREHOLDER WELFARE

A. A List of Shark Repellent Techniques (compiled by Anisman and Crosbie)	1087
B. Jarrell and Poulsen, "Shark Repellents and Stock Prices," 19 J. Fin. Econ. 127 (1987)	1093
C. Carney, "Two-Tier Tender Offers and Shark Repellents"	1134
D. The Role of the TSE	1143

XIII.

GOING PRIVATE TRANSACTIONS

A. Some of The Ways of Going Private	1144
(i) Freezeout (Or Squeezeout) Amalgamation	1144
(ii) Compulsory Acquisition	1145
(iii) Reverse Stock Split (or "Consolidation Freezeout")	1145
(iv) Sale of Assets	1146
(v) Redemption Flip-Flop	1146
(vi) Arrangement	1146
(vii) The Going Private Provision of the OBCA	1147
B. Types of Going Private Transactions	1147
C. Jensen, "Active Investors, LBOs, and The Privatization of Bankruptcy"	1149
D. The Regulation of Going Private Transactions	1168

	<u>PAGE</u>
E. Judicial and Administrative Reactions to Going Private Transactions	1170
(i) Re Ripley International Ltd. (1977) 1 B.L.R. 269 (O.H.C.J.)	1170
(ii) Re Standard Manufacturing Co. and Baird (1984) 5 D.L.R. (4th) 697 (Nfld. S.C.T.D.)	1173
(iii) In the Matter of The Securities Act, R.S.O. 1970, ch.426 as amended and In the Matter of Loeb, Ltd., and Loebex Ltd.	1177
F. The Quality of Disclosure Which Must be Made to Offeree Shareholders in Connection with an Insider Bid	1193